(137)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA. 497/03 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANTS:

1. Jagtaran alias Taran, Son of Deendayal Satnami, aged about 45 years, resident of village Kingriyapara, Vicharpur, Police Station Kunda, Mungeli, District Kawardha, Chhattisgarh

2. Ram Singh alias Ramayan, Son of Chandrika Prasad Satnami, aged about 35 years, resident of village Kingriyapara, Vicharpur, Police Station Kunda, Mungeli, District Kawardha, Chhattisgarh.

-Versus-

RESPONDENT: The State of Chhattisgarh

(Appeal under Section 374 (2) of the Cr.P.C.)

Division Bench: -
Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ.

28-11-2007:-

Shri R.K. Jaiswal, counsel for the appellant No.1.

Shri G.P. Kurre, counsel for the appellant No.2.

Shri Sudhir Bajpai, Deputy Govt. Advocate for the State.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 31st October, 2002 passed by the 2nd Additional

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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Sessions Judge (FTC), Mungeli, in S.T. No.400/2000 whereby the learned Additional Sessions Judge after holding accused/appellant Jagtaran @ Taran guilty for commission of offence under Sections 302 and 333 of the I.P.C., sentenced him to undergo imprisonment for life & to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo R.I. for 2 years and to undergo R.I. for 10 years & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year, respectively, whereas co-accused Ram Singh @ Ramayan has been convicted for commission of offence under Sections 302/34 and 333/34 of the I.P.C. and sentenced to undergo imprisonment for life & to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo R.I. for 2 years and to undergo R.I. for 10 years & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year, respectively. However, third accused namely, Hemchandra has been acquitted of the charges under Sections 302 and 333/34 of the I.P.C.

The case of the prosecution, in brief, is that on the date of the incident i.e. 24-8-2000 accused/appellant Jagtaran @ Taran was Up Sarpanch of the village Nagopahri whereas, accused Ram Singh is the nephew of Jagtaran. The accused/appellants were the residents of village Kingriyapara which is adjacent to the vicinity of Vicharpur. On that day, there was meeting of Gram Sabha in the village Fasterpur, same ended at about 5 p.m. On 1-10-2000, accused Jagtaran was arrested in the police chowky Surajkund, District Faridabad in Crime No.696/2000 for commission of offence under Sections 25, 54 & 59-A of the Arms Act and Section 216 of the IPC. On 4-10-2000, accused Jagtaran was handed over by CJM for investigation in the crime. He was arrested on 6-10-2000

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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	by Police Station Kunda, Fasterpur. After the arrest he was brought to the Police Station Kunda. On 24-8-2000, Mahasingh Sahu, was posted at Police Station Kunda as Assistant Sub Inspector. On 24-8-2000, police outpost of Pandatarai, Police Station Kunda, received information that Jagtaran @ Taran of village Vicharpur along with his associates has committed theft, robbery and daccity, also he after committing rape with sister of Kotwar of village Sarangpur of Police Station Bodla, has committed her murder. The report was registered in Rojnamcha Sana No.428 at about 12.25 p.m. Thereafter, Assistant Sub Inspector Mahasingh Sahu left the place at about 12.30 noon in search of the accused. On that day, all the 3 accused persons were present in the meeting of Gram Sabha. The meeting ended at about 5 p.m. Thereafter, Mahasingh Sahu, Assistant Sub Inspector, (since deceased) met accused Jagtaran @ Taran & asked accused Jagtaran to come to the police station. Thereafter, Mahasingh Sahu went to Jaiswal Hotel & the accused persons went towards Fasterpur School, at about 6 p.m. in the evening the accused persons were standing near Primary School building. Deceased Mahasingh Sahu left for Kunda on his motorcycle along with Mohd. Yasim (PW-7). Mahasingh Sahu along with Mohd. Yasim met the accused persons on the way near primary school. When Mahasingh Sahu saw the accused, he stopped the motorcycle and asked Jagtaran as to why he has not gone to the Police Station Kunda so far, on which the accused persons asked him as to who was he to ask them to go to the police station and said that "मारो साले को". Ram Singh who was carrying Tabbal in his hand gave the same to Jagtaran, in turn accused Jagtaran attacked Mahasingh Sahu with Tabbal on his head, at that time	

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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Mahasingh Sahu was sitting on the motorcycle. However, witness Mohd. Yasim fell down from the motorcycle. Assault of Tabbal hit Mahasingh Sahu. Accused Jagtaran attacked twice, as a result of which Mahasingh Sahu fell down from the motorcycle. Jagtaran continued to attack Mahasingh Sahu with Tabbal, as a result of which Mahasingh Sahu died instantaneously.

Mohd. Yasim (PW-7) lodged the report in the Police Station Kunda at about 6.30 p.m. on 24-8-2000 which was registered under Ex.P/18 by head constable Ram Lakhan. He registered merg intimation Ex.P/43 at S. No.19/2000. The investigation was taken up by PW-14 V.K. Singh, SHO, Police Station and by Umesh Garg, (PW-15) Sub Inspector, after giving notice Ex.P/1 to the Panchas, inquest on the body of the deceased was prepared under Ex.P/2. The body was sent for postmortem examination. (PW-6) Dr. P.L. Kurre conducted the postmortem and prepared postmortem report Ex.P/7. He opined that cause of death was shock and haemorrhage as a result of injuries on the head. Accused Ram Singh gave memorandum Ex.P/30, in pursuance of that memorandum, Tabbal was seized under Ex.P/30-A. Clothes of accused Jagtaran @ Taran were seized under Ex.P/24 based on the memorandum given by him under Ex.P/23. Site plan Ex.P/22 was prepared by Patwari. Recovered articles were sent for chemical examination to the FSL, Raipur under Ex.P/37 from where report Ex.P/39 was received. Serologist's report Ex.P/44 was also received. As per the Serologist's report, Shirt and Pajama of accused Jagtaran were found stained with human blood.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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After completion of the investigation, charge sheet was filed against the accused persons in the Court of Judicial Magistrate, 1st Class, Mungeli, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charges against the accused persons examined 15 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which each of the accused denied material appearing against them, stated that they are innocent and have been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties convicted and sentenced accused/appellants namely, Jagtaran @ Taran & Ram Singh @ Ramayan as aforesaid and acquitted accused Hemchandra of all the charges.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellants have not disputed homicidal death of Mahasingh Sahu. Moreover, PW-7 Mohd. Yasim has stated in his evidence that accused Jagtaran attacked the deceased with Tabbal on his head, as a result of which he sustained injuries and fell down. This ocular evidence is corroborated by the medical evidence of Dr. P.L. Kurre (PW-6). He has stated that on 25-8-2000 at about 10 a.m. he was working in the Primary Health Centre, Pandariya as Assistant Surgeon. On that day he was called by the Police Station Pandariya for

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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conducting postmortem. He conducted postmortem on the body of the deceased at 10 a.m. He noticed following injuries:-

(i) Incised wound on the face,

(ii) Incised wound in the size of 9 cm x 2 cm x 2 cm near injury no.(i),

(iii) Incised wound in the size of 8cm x 1 cm x 3 cm on the right side of Mandible extending up to the neck,

(iv) Incised wound in the size of 13 cm x 2 cm on the right temporal region deep up to the bone,

(v) Incised wound in the size of 13 cm x 2 cm bone deep right tempo parietal region,

(vi) Lacerated wound in the size of 4 cm x 2 cm deep up to the bone on the right side of forehead,

(vii) Incised wound in the size of 11 cm x ½ cm x bone deep on the left parietal region in the shape of half moon,

(viii) Incised wound in the size of 7 cm x ½ cm.

Skull bone was cut, which was near Occipital bone on the left side. There were 9 abrasions, which were of different sizes on different parts of the body. He has further stated that on opening the body head of the right mandible was found cut beneath injury Nos.4, 5 and 8. Brain matter was coming out. The margins of the injuries were reddish. Clotted blood was present. Injuries were ante mortem in nature. Cause of death was shock and haemorrhage as a result of injuries. In his opinion, death was on account of head injury. In view of the above ocular and medical evidence, it is established that death of the deceased was homicidal in nature.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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	As far as complicity of the accused persons in the crime in question is concerned, conviction primarily rests on the testimony of PW-7 Mohd. Yasim. He has stated that on the fateful day at about 2 p.m. he went to Fasterpur to bring certain items from the shop of Rajju Mistri. He has stated that he along with Keshav, Manish and Kamlesh were talking on the bicycle shop of Manish. Thereafter, they went to tea stall where they consumed tea. Thereafter, he returned to Rajju Mistri's shop where Mahasingh Sahu, Assistant Sub Inspector, came. He was getting repaired his motorcycle. He enquired from him as to whether he will go to Kunda, then he said that yes, he will go. He has personal work with some person. Thereafter, he along with Mahasingh Sahu went to Jaiswal hotel where accused Taran was sitting. Mahasingh Sahu asked him to sit in the hotel. He went near accused Taran, asked him and thereafter he returned. Thereafter, Mahasingh Sahu asked him let us go to Kunda. When they reached to a triangle point of Vicharpur, they saw Taran, on which Mahasingh Sahu asked him that let him meet Taran again where Taran, Ram Singh and one other person were standing. Mahasingh Sahu asked Taran as to whether he will not go to the police station, on which Ram Singh and other persons asked Taran that "मारो साले को". Taran snatched Tabbal from Ram Singh and attacked Mahasingh Sahu with the said Tabbal, which hit on the head of Mahasingh Sahu. Again he attacked him, as a result of which Mahasingh Sahu fell down from the motorcycle. He started running from that place. Shri R.K. Jaiswal, counsel for the appellant No.1, argued that this witness is stock witness of the police as his shop is near the police station.	

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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Moreover, as per his evidence, he went to the police station by boarding a bus, which was at a distance of 10-12 km from the place of occurrence, but he did not disclose this fact to anybody. No other witness has been produced by the prosecution. Therefore, on testimony of such unreliable single witness conviction recorded by the trial Court is bad in law.

On the other hand, learned counsel for the State supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused evidence of PW-7 Mohd. Yasim. In order to substantiate the argument advanced by counsel for appellant No.1, he was unable to point out any infirmity in cross-examination of this witness which discredit evidence of this witness or to establish that this witness is stock witness of the police & he has deposed in favour of the police in many cases or to establish that his presence on the scene of occurrence was doubtful. Moreover, merely because the shop of this witness was near police station cannot be a ground to discard evidence of this witness. Unless in cross-examination of this witness some material is brought on record which establishes presence of this witness as doubtful on the place of occurrence, rather presence of this witness on the place of occurrence is established by the evidence of PW-8 Keshav. He has stated that on the fateful day when the murder of Mahasingh Sahu was committed at Fasterpur, he saw accused Taran near hotel. He was chewing pan near push trolley. He has further stated that Kamlesh, Pavan, Mohd. Yasim and Manish Raj were sitting on the bicycle shop of Manish at about 12-1 noon. Therefore, from evidence of this witness, presence of Mohd. Yasim, Mahasingh Sahu and the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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accused at the place of occurrence is established and he has not been cross-examined on this aspect. Moreover, PW-4 Ismyle, driver of mini bus of Sardarji, has stated that on the fateful day he was taking the bus from Fasterpur to Kunda. Mohd. Yasim came and he boarded the bus at about 6 p.m. in the evening. Therefore, from the evidence of PW-4 Ismyle, for rest of his evidence, he has been declared hostile, but the fact that Mohd. Yasim traveled in his bus from Fasterpur to Kunda at 6 p.m. in the same day, it establishes presence of Mohd. Yasim in the village Fasterpur. Therefore, presence of Mohd. Yasim on the date of the incident in the village Fasterpur has been established by his evidence and corroborated by the evidence of PW-4 Ismyle and PW-8 Keshav. There is no reason before this Court to disbelieve the evidence to that extent.

As far as argument of learned counsel that this witness namely, PW-7 Mohd. Yasim did not disclose to anybody about the incident on the way from Fasterpur to Kunda is concerned, since murder of one ASI took place, this witness was going to the police station itself, if he has not said anything to any witness during his journey, that cannot be a ground to disbelieve his evidence unless anybody enquired from him or some known person met him, there was no necessity for him to disclose to everybody about the incident, as he himself was going to the police station to lodge the report and he immediately reported the matter to the police station.

Shri Jaiswal argued that this witness has stated that only two injuries were inflicted whereas, as per the postmortem report and the doctor's evidence, as many as 17 injuries were noticed on the body of the deceased, out of those, 9 injuries were abrasions.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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Perusal of cross-examination of this witness reveals that he has stated that he saw accused Taran attacking the deceased with Tabbal on his head twice, thereafter, he ran away, even thereafter Taran continued to attack. Therefore, from the above evidence, we do not find any discrepancy between ocular and medical evidence. This witness was not related to the deceased in any manner. There was no reason before him to implicate the accused persons in a false crime that too for murder of Assistant Sub Inspector of police, as some criminal case was registered against Taran, therefore, it was but natural for Mahasingh Sahu to go in search of the accused. He met the accused and asked him to go to the police station. Therefore, as far as complicity of accused Jagtaran @ Taran is concerned, same is established. We do not find any illegality or infirmity in the judgment of the trial Court to that extent. Even presence of Ram Singh has been established by the evidence of this witness. He has stated that Ram Singh and third person said that "मारो साले को". Accused Jagtaran @ Taran snatched Tabbal which Ram Singh was carrying and attacked with that Tabbal.

The question remains as to whether act of accused Ram Singh was to the extent that he was sharing common intention with Taran to commit murder of Mahasingh Sahu, as per the evidence and prosecution case, in the first instance, when Mahasingh Sahu met Taran, he asked him to go to the police station, thereafter Mahasingh Sahu was returning to Kunda from Fasterpur on motorcycle, on the way he saw accused Taran along with Ram Singh and one person more, he went near Taran, asked him as to why he has not gone to the police station, on which Ram Singh along with

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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third person said to have uttered word "मारो साले को", on which accused Taran snatched Tabbal which co-accused Ram Singh was carrying and attacked. The word "मारो साले को" cannot be termed that accused Ram Singh was sharing common intention with Taran to commit the murder of the deceased. Even as per the evidence of PW-7 Mohd. Yasim, Taran snatched Tabbal from Ram Singh and attacked the deceased. No overt act of any kind has been attributed to Ram Singh. The allegation against Ram Singh is that he uttered the word "मारो साले को", same cannot be termed as he was sharing common intention to commit the murder. On the other hand, it can be said that the accused abetted Taran to assault the deceased. Therefore, at the most, accused Ram Singh could be guilty for abetment of an offence under Section 332 in view of Section 110 IPC, which envisages that punishment of abetment if person abetted does act with a different intention from that of abettor. Section 332 IPC envisages that voluntarily causing hurt to deter public servant from discharging his duties. Therefore, it could not be said that Ram Singh in fact exhorted to commit the murder of the deceased. As such, as far as Ram Singh is concerned, from the evidence available on record and the manner in which Jagtaran @ Taran snatched Tabbal from Ram Singh, offence against Ram Singh does not travel beyond Section 332/110 of the I.P.C.

As far as conviction of accused Jagtaran @ Taran is concerned, Shri Jaiswal argued that there is nothing on record which suggests that accused Jagtaran @ Taran attacked the deceased with intention to cause his death, rather injuries were inflicted in a sudden quarrel, therefore,

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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accused Jagtaran @ Taran is entitled for the benefit of Exception IV to Section 300 of the I.P.C.

On the other hand, learned counsel for the State supported the judgment of the trial Court.

In order to appreciate the argument advanced by learned counsel for the appellant, we have perused evidence. For the sake of repetition if we peruse the evidence of PW-7 Mohd. Yasim, he has categorically stated that in the first instance Mahasingh Sahu went to Taran, he talked with him for about 5 minutes and returned thereafter. Mahasingh Sahu along with Mohd. Yasim were going to Kunda on his motorcycle, on the way, Mahasingh Sahu saw Taran along with two other persons. He met him. When deceased Mahasingh Sahu asked accused Taran as to why he has not gone to the police station so far, on which Ram Singh exhorted Taran by saying "मारो साले को". Taran snatched Tabbal and attacked Mahasingh Sahu with that. He caused as many as 7 incised wounds, one lacerated wound on vital parts of the body i.e. face and head, as a result of which bone of face and head was cut and he died instantaneously. This act of the accused suggests that he attacked the deceased with deadly iron weapon i.e. Tabbal on vital part of the body. While discharging his duties he asked the accused to go to the police station, as there was criminal case against him. When second time he asked as to why he has not gone to the police station so far the accused became angry and attacked him with Tabbal. In the first instance, there was no quarrel between the two. In order to attract the provisions of Exception IV to Section 300 of the I.P.C. it is necessary that there must be sudden quarrel or fight, which is

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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absent in this case. On the contrary, Mahasingh Sahu asked the accused to go to the police station, without any rhyme or reason, the accused attacked the deceased while he was discharging his duties, with deadly weapon on vital part of the body, on account of merciless attack made by the accused Mahasingh Sahu died instantaneously. Therefore, intention of the accused to cause death of the deceased was writ large. In the circumstances, we do not find any illegality or infirmity in the finding of the trial Court convicting the accused for commission of offence under Section 302 of the I.P.C. for committing the murder of Mahasingh Sahu. As the accused has been convicted and sentenced under Section 302 of the I.P.C., his conviction and sentence under Section 333 of the I.P.C. is unnecessary.

In the result, the appeal in respect of accused Ram Singh is partly allowed. Conviction and sentence imposed upon him under Sections 302 read with Section 34 and 333 read with Section 34 of the I.P.C. are set aside and he is acquitted of the said charges, instead thereof, he is convicted under Section 332/110 of the I.P.C. and sentenced to undergo R.I. for 3 years. It is stated that Ram Singh was in detention from 25-8-2000 to 25-8-2001 and thereafter from the date of the judgment i.e. 31-10-2002 up to 24-11-2006, thereby he has already undergone the sentence imposed upon him. Vide order dated 24-11-2006 Ram Singh was granted bail. His bail bonds are discharged and he need not surrender to the bail bonds.

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(150)

मामला क्रमांक CRA 497/03 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
Parve	The appeal of accused Jagtaran @ Taran fails and same is dismissed. Conviction and sentence imposed upon him under Section 302 of the I.P.C. are maintained. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**